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FILED  
UTAH APPELLATE COURTS  
MAR 11 2008

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IN THE UTAH SUPREME COURT

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WANDA EILEEN BARZEE,

Petitioner

v.

HONORABLE JUDITH H. ATHERTON,

Respondent.

PETITION FOR  
EXTRAORDINARY WRIT

Case No. 20080197-SC

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Wanda Eileen Barzee, through counsel of record, David V. Finlayson and Scott C. Williams, hereby petitions this Court, pursuant to Rule 19 of the Utah Rules of Appellate Procedure, for issuance of an extraordinary writ directing the Honorable Judith H. Atherton to temporarily stay the imposition of her order to the Utah State Hospital to immediately medicate Ms. Barzee against her will. Ms. Barzee requested a stay in the trial court pending the disposition of her anticipated Petition for Certiorari to the United States Supreme Court. Her motion was denied by memorandum decision dated March 7, 2008 (received by counsel by mail March 10, 2008). Ms. Barzee anticipates her petition for certiorari will be filed with the Utah Supreme Court by tomorrow. The Utah State Hospital has acknowledged that it is not in the best medical interests of Ms. Barzee to have forcible medication administered and then discontinued. The effect of the original decision of the trial court's finding that Ms. Barzee could be medicated

against her will was stayed by stipulation of the parties without the necessity of a request based upon the representation of counsel for Ms. Barzee that an appeal would be filed with this Court. Consistent with her desire to invoke the full extent of her direct appeal right, Ms. Barzee has put the trial court on notice that a petition for certiorari would be filed with the United States Supreme Court. Her request for stay has nonetheless been expressly denied.

#### **POTENTIAL AFFECTED PERSONS OR ASSOCIATIONS**

Persons or associations which might be substantially affected by the extraordinary writ requested herein include:

1. Honorable Third District Court Judge Judith H. Atherton\
2. Lohra L. Miller, District Attorney for Salt Lake County
3. Utah State Hospital, Department of Human Services

#### **STATEMENT OF ISSUES PRESENTED AND RELIEF SOUGHT**

The sole issue is whether the trial court should stay imposition of an order directed to the Utah State Hospital requiring the immediate involuntary medication of the Petitioner despite her intent to seek certiorari review in the United States Supreme Court. The Utah State Hospital acknowledges that it would be preferable that Ms. Barzee not be subjected to involuntary medication and then discontinued from medication based upon a subsequent court ruling. The relief sought is simply an extraordinary writ ordering that involuntary medication not be initiated during the pendency of Ms. Barzee's petition for certiorari review before the United States Supreme Court, and pendency of the proceedings in that court should the petition be accepted. The request of the petitioner represents the status quo for the recent years during which the medication issue has been pending in the state courts.

## RELEVANT FACTS AND BACKGROUND

On March 18, 2003, Ms. Barzee was charged with various crimes. Shortly thereafter, on March 27, 2003, the State filed a petition to inquire into Ms. Barzee's competency to stand trial. She was deemed incompetent by stipulation of the parties and by findings and conclusions issued by the trial court on February 4, 2004. Ms. Barzee was remanded to the custody of the Utah State Hospital for treatment intended to restore her to competency. Subsequent findings and conclusions that Ms. Barzee remained incompetent notwithstanding the treatment were entered by the trial court on February 4, 2005.

On February 7, 2005 the Utah State Hospital put the trial court on notice that a hearing should be conducted to determine whether antipsychotic medication could be involuntarily administered to Ms. Barzee. No action was taken by the trial court. On October 14, 2005 the State of Utah filed a Motion for Medication Hearing and for Forced Medication. A hearing on the motion was not conducted until February 6, 2006, one year after the Hospital had originally requested it. Simultaneous briefs were filed by the parties on April 17, 2006. Two months later, On June 21, 2006, the trial court issued a ruling granting the State's motion to involuntarily medicate Ms. Barzee. Ms. Barzee informed the parties and the trial court that she intended to appeal the ruling to this Court. On August 7, 2006, by agreement of the parties and the trial court, and without need for a motion or other filing, the trial court issued an Order to Stay Order Granting State's Motion to Compel Medication. This Court granted Ms. Barzee's petition for interlocutory review on September 20, 2006.

Briefing of the interlocutory appeal was expedited, and oral argument was heard before this Court on December 6, 2006. One year later, on December 14, 2007, this Court affirmed the

trial court ruling. A remittitur to the trial court issued and was filed in the district court January 28, 2008. Without prior notice to any party, on February 8, 2008 the trial court issued a “Minute Entry” stating:

In light of the decision of the Utah Supreme Court in State v. Barzee, 2007 UT 95, this Court Order’s [sic] the Department of Human Services administer medication(s) to the defendant for the purpose of restoring her to competence.

(A copy of the minute entry is attached hereto as Exhibit A.) On February 12, 2008, in response to the sudden issuance of the minute entry, Ms. Barzee filed a Motion to Stay Minute Entry Order Regarding Medication. (A copy is attached hereto as Exhibit B.) In the motion counsel for Ms. Barzee notified the trial court that Ms. Barzee would be filing a petition for certiorari review in the United States Supreme Court and that the impact on her person and her constitutional rights would be incapable of redress if the Hospital followed the order but review and reversal ultimately occurred. Additionally, counsel for Ms. Barzee noted that a specific treatment plan, which both parties had anticipated would be available for review prior to involuntary medication being initiated, had apparently not been prepared and that the circumstances of a different treatment team and the passage of a significant time period warranted a review. Ms. Barzee requested a hearing on her motion to stay.

The Utah State Hospital has opined that it would prefer to await administration of involuntary medication until a final determination is made given the undesirability of starting and then stopping a medication regimen. In fact, on March 6, 2008, the State filed a motion in the trial court for an order authorizing the Hospital to disclose medical information related to Ms. Barzee so that it could be informed on the merits and “for the purpose of responding to the Defendant’s motion for a stay and request for a hearing.” (A copy is attached hereto as Exhibit

C.) On the same date the State filed a memorandum in opposition to Ms. Barzee's motion for stay. (A copy is attached hereto as Exhibit D.)

On March 7, 2008, again without any prior notice to the parties, the trial court issued a "Memorandum Decision" denying Ms. Barzee's motion for stay and stating that "[t]he Hospital is again ordered to immediately medicate defendant." (A copy is attached hereto as Exhibit E.) The present Petition is in response to the Memorandum Decision.

Ms. Barzee's Petition for Certiorari Review will be filed in the United States Supreme Court tomorrow, March 12, 2008.

### **REASONS WHY NO OTHER ADEQUATE REMEDY EXISTS**

No remedy short of a temporary stay of involuntary medication would be adequate under the present circumstances. The personal and constitutional harms which Ms. Barzee seeks to avoid but are implicated by the legal issues cannot be redressed once visited upon her. The Hospital acknowledges that it is not in her best medical interests, nor their preference, to begin a medication regimen if there is a chance that it will have to be discontinued.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

"[A]n individual has a 'significant' constitutionally protected liberty interest in avoiding the unwanted administration of antipsychotic drugs." *Sell v. United States*, 539 U.S. 166, 177 (2003). Citing to *Washington v. Harper*, 494 U.S. 210, 221 (1990), Chief Justice Durham noted at paragraph 36 of her dissenting opinion in the present case that "[t]he issue of forcibly medicating a defendant for the sole purpose of making her competent to stand trial implicates constitutional liberty interests of the highest degree." 2007 UT 95. The present case is one of first impression in Utah. In applying *Sell* criteria, this Court acknowledged, at paragraph 80 of

the decision, that the United States Supreme Court did not speak to the standard an appellate court should apply in reviewing a lower court's decision. *Id.* This Court was divided on the issue. This quintessentially appellate legal issue forms the basis for Ms. Barzee's petition for certiorari review.

In her February 12, 2008 motion to stay the medication minute entry, Ms. Barzee notified the court of her intent to continue to invoke her direct appeal rights and file a petition for interlocutory review in the United States Supreme Court, and related concerns about the practical implications of involuntary medication given a complete change of treatment team and the significant passage of time without any updated information. (The time period for filing a petition for certiorari review has not lapsed, and Ms. Barzee expects that her petition will be filed with the United States Supreme Court by tomorrow, March 12, 2008.) Without any reference to these factors, Judge Atherton simply asserts in her Memorandum Decision that "defendant presents no legitimate argument to stay the immediate imposition of the Order of medication, nor does she cite any case law or other legal justification for staying the Order." (Exhibit E at 1.) Given the irreversible impact of the issue and the fact that the trial court and the interested parties have always universally agreed that involuntary medication should be stayed pending the ultimate resolution of the issues through the appeals process, the reasonable expectation has been that the present stay request would be uncontroversial. Otherwise Ms. Barzee would have sought a stay from this Court prior to the remittitur pursuant to Rule 36 of the Utah Rules of Appellate Procedure.

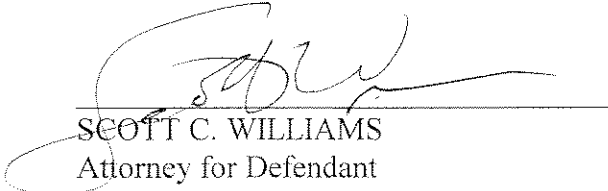
There does not appear to be any exigent need to proceed with sudden haste in regard to forcible medication, especially considering the irrevocable impact that it will occasion. After

receiving notice from the Hospital that it desired to employ a treatment modality which called for involuntary medication but needed a ruling from the court, the trial court waited a full year to conduct the necessary hearing. Thereafter briefing was accomplished and another two months elapsed before a ruling was issued. In this Court a full year elapsed between the oral argument and decision. It hardly seems important, much less critical, to now feverishly impose the impingement on constitutional rights where Ms. Barzee seeks a modest stay to accommodate the relatively short time period necessary to await response to her petition for certiorari review and a decision from the United States Supreme Court.

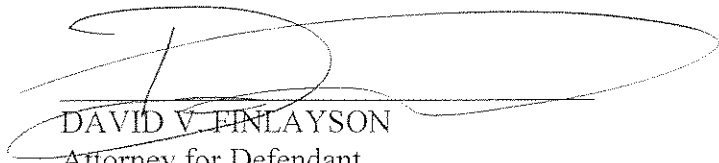
#### **NEED FOR EMERGENCY ACTION**

Given the foregoing, Petitioner respectfully submits the need for immediate action by this Court. Based upon the district court's recent order, without action by this Court, the Utah State Hospital has stated its intention to immediately begin medicating Ms. Barzee by force if necessary. Pursuant to Rule 19(d) of the Utah Rules of Appellate Procedure, Ms. Barzee respectfully requests that the present Petition be immediately granted subject to review by this Court at the earliest time thereafter.

Respectfully submitted this 12<sup>th</sup> day of February, 2008.



SCOTT C. WILLIAMS  
Attorney for Defendant



DAVID V. FINLAYSON  
Attorney for Defendant

CERTIFICATE OF SERVICE

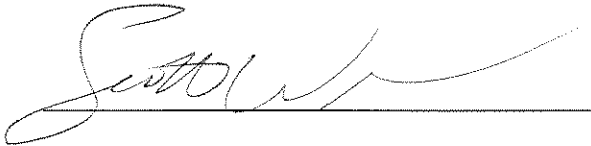
I hereby certify that a correct copy of the foregoing was served, hand delivered or delivered via facsimile, followed by United States mail, to the following:

Susan Eisenman  
Assistant Utah Attorney General  
120 North 200 West, 3<sup>rd</sup> Floor  
Salt Lake City, Utah 84103  
Attorney for Utah State Hospital

Alisha Cook  
Deputy District Attorney  
Salt Lake District Attorney's Office  
111 East Broadway  
Salt Lake City, UT 84111

Honorable Judith H. Atherton  
Third District Court Judge  
450 South State Street  
PO Box 1860  
Salt Lake City, Utah 84114-1860

on this 11<sup>th</sup> day of March, 2008.





## **EXHIBIT A**

FILED DISTRICT COURT  
Third Judicial District

FEB 02 2008

IN THE THIRD DISTRICT COURT  
OF SALT LAKE COUNTY, STATE OF UTAH

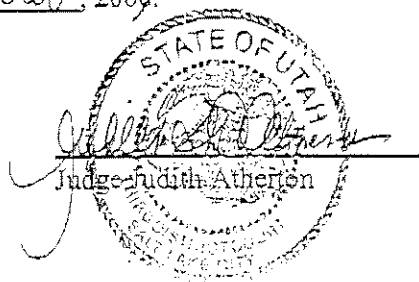
SALT LAKE COUNTY

Deputy Clerk

State of Utah, : MINUTE ENTRY  
Plaintiff, :  
vs. : CASE NO. 031901886  
Wanda Eileen Barzee :  
Defendant. :

In light of the decision of the Utah Supreme Court in State v Barzee, 2007 UT 95, this Court Order's the Department of Human Services administer medication(s) to the defendant for the purpose of restoring her to competence.

Dated this 8 day of Feb., 2008.



## **EXHIBIT B**

DAVID V. FINLAYSON (6540)  
SCOTT C. WILLIAMS (6687)  
Attorneys for Defendant  
43 East 400 South  
Salt Lake City, Utah 84111  
Telephone: (801) 220-0700  
Facsimile: (801) 364-3232

IN THE THIRD DISTRICT COURT, IN AND FOR SALT LAKE COUNTY

## STATE OF UTAH, SALT LAKE DEPARTMENT

STATE OF UTAH,

Plaintiff,

Y.

WANDA EILEEN BARZEE.

Defendant.

MO>TION TO STAY MINUTE  
ENTRY ORDER REGARDING  
MEDICATION


Case No. 031901886 FS

JUDGE: Honorable Judith Atherton


The Defendant, Wanda Barzee, through counsel of record ~~C~~, David V. Finlayson and Scott C. Williams, hereby requests that this Court stay the effect of the minute entry apparently issued on February 8, 2008, which “Order’s [sic] the Department of Human Services administer medication(s) to the defendant for the purpose of restoring her to competence.” ( Counsel for defendant had no notice of the intent to issue such a minute entry, but learned of its issuance ~~o~~ when contacted by the press for comment.) It was counsels’ understanding that this Courts’ previous stay of the Ruling On Motion To Compel Medication was stipulated by all parties. Additionally, ~~t~~ There was previously some discussion between the parties and this Court about the possible need for a further hearing regarding a treatment regimen.

Counsel for Defendant are in the process of preparing a Petition for Writ of Certiorari to the

Respectfully submitted this 12<sup>th</sup> day of February, 2008.



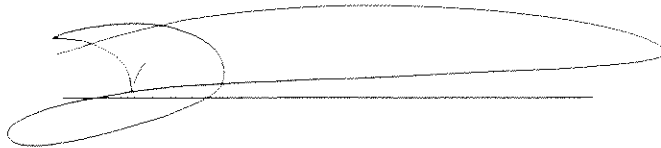
SCOTT C. WILLIAMS  
Attorney for Defendant



DAVID V. FINLAYSON  
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing motion was DELIVERED to the Salt Lake District Attorney's Office, 111 East Broadway, Salt Lake City, UT 84111 on this 12<sup>th</sup> day of February, 2008.



## **EXHIBIT C**

LOHRA L. MILLER  
District Attorney for Salt Lake County  
ALICIA H. COOK, Bar No. 8851  
Deputy District Attorney  
111 East Broadway, Suite 400  
Salt Lake City, Utah 84111  
Telephone: (801) 363-7900

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

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THE STATE OF UTAH,	)	
	)	MOTION FOR ORDER AUTHORIZING
Plaintiff,	)	UTAH STATE HOSPITAL TO
	)	DISCLOSE INFORMATION
-VS-	)	
	)	Case No. 031901886
WANDA EILEEN BARZEE,	)	
	)	Judge JUDITH S. ATHERTON
Defendant.	)	

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Plaintiff, State of Utah, by and through Lohra L. Miller, District Attorney for Salt Lake County, and Alicia H. Cook, Deputy District Attorney, respectfully submits this Motion for an Order Authorizing the Utah State Hospital to Disclose Information regarding Defendant Barzee.

The State hereby moves this Court for an order authorizing the State Hospital to release information regarding Defendant that is relevant to this Court's medication order, as well as Defendant's motion for a stay of that order and Defendant's request for a hearing, including Defendant's current clinical condition and the State Hospital's proposed treatment plan. Under the federal Health Insurance Portability and Accountability Act, a covered entity may disclose protected information if a court orders

disclosure. 45 C.F.R. § 164.512(e)(1)(i). Therefore, the State requests such an order for the purpose of responding to the Defendant's motion for a stay and request for a hearing.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of March, 2008.

LOHRA L. MILLER  
District Attorney for Salt Lake County

ALICIA H. COOK  
Deputy District Attorney  
Attorney for the State of Utah

By: Alicia H. Cook  
ALICIA H. COOK  
Deputy District Attorney



CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing State's Motion Authorizing Utah State Hospital to Disclose Information was delivered to SCOTT WILLIAMS and DAVID FINLAYSON, Attorneys for the Defendant, WANDA EILEEN BARZEE at 43 East 400 South, Salt Lake City, UT 84111 on the 6<sup>th</sup> day of March, 2008.

*Felicia H. Cook*

## **EXHIBIT D**

LOHRA L. MILLER  
 District Attorney for Salt Lake County  
 ALICIA H. COOK, Bar No. 8851  
 Deputy District Attorney  
 111 East Broadway, Suite 400  
 Salt Lake City, Utah 84111  
 Telephone: (801) 363-7900

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
 IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

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THE STATE OF UTAH,	)	
Plaintiff,	)	MEMORANDUM IN OPPOSITION TO
	)	DEFENDANT'S MOTION TO STAY
-vs-	)	MINUTE ENTRY ORDER
	)	REGARDING MEDICATION
WANDA EILEEN BARZEE,	)	
	)	Case No. 031901886
Defendant.	)	Judge JUDITH S. H. ATHERTON

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Plaintiff, State of Utah, by and through Lohra L. Miller, District Attorney for Salt Lake County, and Alicia H. Cook, Deputy District Attorney, respectfully submits this memorandum in opposition to Defendant's motion to stay the Court's order granting the State's petition for involuntary medication.

**I. DEFENDANT'S REQUEST FOR A STAY SHOULD BE DENIED.**

Defendant's request for a stay of the Court's February 8<sup>th</sup>, 2008 order should be denied because there are no grounds for granting the motion. Defendant's motion is based on Defendant's intent to file a petition for writ of certiorari with the United States Supreme Court. The likelihood, however, of such a petition being granted is low. "A

petition for a writ of certiorari will be granted only for compelling reasons.” U.S.Sup.Ct. Rule 10, 28 U.S.C.A.. The United States Supreme Court will generally only review the decision of a state court if that court has decided an important federal question in a way that conflicts with another state court or a federal appellate court, or if a state court has decided an important federal question that has not been, but should be, addressed by the U.S. Supreme Court. *Id.* Furthermore, “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *Id.*

The instant case does not present any important federal questions that have been undecided by the United States Supreme Court or that have been decided in a way that conflicts with another court. The question of whether a defendant can be involuntarily medicated for the purpose of competency restoration has been answered by the United States Supreme Court in *Sell vs. United States*, 539 U.S. 166 (2003), and the considerations and standards for issuing such an order have been enunciated in that case as well. The only possible basis for a petition for a writ of certiorari that can be raised by Defendant therefore falls into the category of “erroneous factual findings or the misapplication of a properly stated rule of law,” and is very unlikely to be granted.

In her motion, Defendant states that the stay of the Court’s June 21<sup>st</sup>, 2006, order for medication was stipulated to by all parties. The State concedes that it agreed to the stay of the June 21<sup>st</sup> order, but this agreement extended only to staying proceedings while Defendant’s appeal of the June 21<sup>st</sup> order was pending before the Utah Supreme Court. The Supreme Court has now upheld the medication order, and the prior stipulation ended

with the issuance of that decision. The State did not agree to a stay pending an appeal to the United States Supreme Court, or any other appeals that might now occur.

Defendant has also requested a hearing to address her current medical status, the State Hospital's proposed treatment plan, available medications, and other unidentified factors. Defendant has provided no information to suggest that her clinical status, particularly her diagnosis, has changed, and has not provided any information to suggest that any treatments have developed since the mediation hearing that would warrant re-examination of the Court's order. The mere fact that time has elapsed since the Court ordered medication should not be seen as a reason to forestall the order, particularly where such a delay is the inevitable result of Defendant's appeal.

### CONCLUSION

Defendant has requested the stay of a lawful proceeding ordered by this Court and upheld by the Utah Supreme Court, without any basis to believe that her petition to the United States Supreme Court will result in a reversal of those decisions. Therefore, Defendant's request for a stay should be DENIED.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of March, 2008.

LOHRA L. MILLER  
District Attorney for Salt Lake County

ALICIA H. COOK  
Deputy District Attorney  
Attorney for the State of Utah

By: Alicia H. Cook  
ALICIA H. COOK  
Deputy District Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing State's Memorandum in Opposition to Defendant's Motion to Stay Minute Entry Order Regarding Medication was delivered to SCOTT WILLIAMS and DAVID FINLAYSON, Attorneys for the Defendant, WANDA EILEEN BARZEE at 43 East 400 South, Salt Lake City, UT 84111 on the 6<sup>th</sup> day of March, 2008.

*Alicia Hook*

## **EXHIBIT E**



FILED DISTRICT COURT  
Third Judicial District

MAR 07 2008

SALT LAKE COUNTY

By

Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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STATE OF UTAH,	:	MEMORANDUM DECISION
Plaintiff,	:	CASE NO. 031901886
vs.	:	
WANDA EILEEN BARZEE,	:	
Defendant.	:	

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This matter is before the Court on defendant's Motion to Stay Minute Entry Order Regarding Medication. This Court, subsequent to the Utah Supreme Court's decision affirming this Court's Order to involuntarily medicate the defendant, ordered the immediate medication of defendant on February 8, 2008. On February 11, 2008, defendant filed her Motion to Stay the medication Order. On March 6, 2008, the State filed its response. In her Motion, defendant presents no legitimate argument to stay the immediate imposition of the Order of medication, nor does she cite any case law or other legal justification for staying the Order. The Utah Supreme Court has thoroughly discussed the issues presented by defendant under the existing United States Supreme Court standard as set forth in Sell v. United States, 539 U.S. 166 (2003). This Court

STATE V. BARZEE

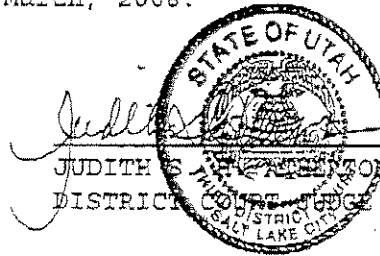
PAGE 2

MEMORANDUM DECISION

concludes there is no basis to stay the Order of medication.  
Accordingly, defendant's Motion is denied.

The Hospital is again ordered to immediately medicate defendant.

Dated this 7 day of March, 2008.



STATE V. BARZEE

PAGE 3

MEMORANDUM DECISION

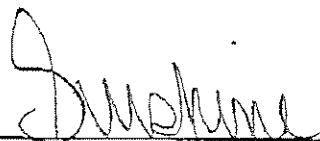
MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 7 day of March, 2008:

Alicia H. Cook  
Deputy District Attorney  
Attorney for Plaintiff  
111 E. Broadway, Suite 400  
Salt Lake City, Utah 84111

David V. Finlayson  
Scott C. Williams  
Attorneys for Defendant  
43 East 400 South  
Salt Lake City, Utah 84111

Utah State Hospital  
1300 E. Center Street  
Provo, Utah 84603

A handwritten signature in cursive script, appearing to read "Sunshine", is written over a horizontal line.